

2. **Locations & Systems:** The parties are unaware of any specific systems containing relevant ESI but expect email searches may be conducted as needed to respond to document requests. The parties agree that all emails in their possession and control are subject to discovery and that reasonable searches will be undertaken to identify e-mails (as well as all other ESI) responsive to discovery requests. The parties are unable at this time to determine if any

responsive ESI is not reasonably accessible. The parties have agreed to confer again if this issue is identified going forward.

3. **Proportionality & Costs:** At this time, the parties expect ESI searches to be conducted inhouse and without significant cost. Should any issues regarding cost or proportionality arise, the parties will confer to address those issues.

4. **Search:** It is not anticipated at this time that email search protocols will be needed to satisfy discovery requests in the case. The parties have agreed to confer again if either party believes search protocols are needed to search e-mails based on the scope of a particular discovery request.

5. **Phasing:** The parties do not believe any phasing of ESI discovery is needed.

6. **Production:** The parties have agreed to exchange ESI in PDF or native (e.g., spreadsheets) format in the first instance. To the extent technologically possible, all ESI shall be produced with corresponding searchable text in a separate text file on a per image or per document basis.

7. **Privilege:** The inadvertent disclosure of privileged information shall be handled in accordance with the February 12, 2021 Order in this case (Dkt. No. 44). The inadvertent disclosure or production of any document, information, or ESI that is subject to a claim of privilege will not be deemed to waive a party's claim to its privileged nature or estop that party or the privilege holder from designating the document, information, or ESI as privileged at a later date. Any party receiving any such document, information, or ESI shall return it upon request from the producing party. Upon receiving such a request as to specific documents, information, or ESI (identified by Bates Number), the receiving party shall return the documents, information, or ESI to the producing party within seven (7) business days, regardless of whether the receiving

party agrees with the claim of privilege. The receiving party may, after returning the documents, information, or ESI, challenge the claim of privilege, as the receiving party may do for any documents, information, or ESI withheld under a claim of privilege.

Dated: July 27, 2021

Respectfully submitted,

JESSE DREWNIAK,

By and through his attorneys affiliated with the American Civil Liberties Union of New Hampshire Foundation, the American Civil Liberties Union of Maine Foundation, and the ACLU Foundation of Vermont,

/s/ Gilles Bissonnette

Gilles R. Bissonnette (N.H. Bar. No. 265393)  
SangYeob Kim (N.H. Bar No. 266657)  
Henry R. Klementowicz (N.H. Bar No. 21177)  
American Civil Liberties Union of New Hampshire  
18 Low Avenue  
Concord, NH 03301  
Tel. 603.224.5591  
[gilles@aclu-nh.org](mailto:gilles@aclu-nh.org)  
[sangyeob@aclu-nh.org](mailto:sangyeob@aclu-nh.org)  
[henry@aclu-nh.org](mailto:henry@aclu-nh.org)

/s/ Emma E. Bond\*

Emma E. Bond  
Zachary L. Heiden\*  
American Civil Liberties Union of Maine Foundation  
P.O. Box 7860  
Portland, Maine 04112  
Tel. 207.619-8687  
[ebond@aclumaine.org](mailto:ebond@aclumaine.org)  
[heiden@aclumaine.org](mailto:heiden@aclumaine.org)

Lia Ernst\*  
James Diaz\*  
ACLU Foundation of Vermont  
90 Main Street  
Montpelier, VT 05602  
Tel. 802.223.6304  
[lernst@acluvt.org](mailto:lernst@acluvt.org)  
[jdiaz@acluvt.org](mailto:jdiaz@acluvt.org)

Scott H. Harris (N.H. Bar No. 6840)  
Steven Dutton (N.H. Bar No. 17101)  
Jeremy Walker (N.H. Bar No. 12170)  
McLane Middleton  
900 Elm Street  
Manchester, NH 03101  
Tel. 603.628-1459  
[Scott.harris@mclane.com](mailto:Scott.harris@mclane.com)  
[Steven.Dutton@mclane.com](mailto:Steven.Dutton@mclane.com)  
[Jeremy.Walker@mclane.com](mailto:Jeremy.Walker@mclane.com)

Albert E. Scherr (N.H. Bar No. 2268)  
Professor of Law  
University of New Hampshire School of Law  
2 White Street  
Concord, NH 03301  
Tel. 603.513.5144  
[Albert.Scherr@law.unh.edu](mailto:Albert.Scherr@law.unh.edu)

Mark Sisti (N.H. Bar No. 2357)  
Sisti Law Offices  
387 Dover Road  
Chichester, NH 03258  
Tel. 603.224.4220  
[msisti@sistilawoffices.com](mailto:msisti@sistilawoffices.com)

JOHN J. FARLEY

Acting United States Attorney

/s/ Robert J. Rabuck  
Robert J. Rabuck (N.H. Bar No. 2087)  
Assistant U.S. Attorney  
Michael McCormack (N.H. Bar No. 16470)  
Assistant U.S. Attorney  
53 Pleasant Street, 4<sup>th</sup> Floor  
Concord, NH 03301  
Tel. 603. 225.1552  
[Rob.rabuck@usjoj.gov](mailto:Rob.rabuck@usjoj.gov)  
[Michael.McCormack2@usdoj.gov](mailto:Michael.McCormack2@usdoj.gov)